Supreme Court, U.S.
FILED

10-593 NOV 3 - 2010

OFFICE OF THE CLERK

No. 10-___

IN THE

Supreme Court of the United States

ADAM WILLIAMS

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN F. STANTON
COUNSEL OF RECORD
STACI D. SCHWEIZER
HOWREY LLP
1299 PENNSYLVANIA AVENUE, NW
Washington, DC 20004
(202) 783-0800
stantonj@howrey.com
schweizers@howrey.com
Attorneys for Petitioner Adam Williams

November 3, 2010

QUESTION PRESENTED

Whether a trial court's abuse of discretion in ignoring and failing to inquire into a defendant's concerns with his counsel and further silencing that defendant affects the integrity of the trial proceeding and renders it impossible for the court of appeals to quantify the effect of the error, such that the error is "structural" and thus harmless error analysis is not appropriate based on this Court's decisions in *Arizona v. Fulminante* and *United States v. Gonzalez-Lopez?*

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 14.1(b), petitioner states that all parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

QUESTION PRESENTED I

PARTIES TO THE PROCEEDING II

OPINION BELOW ..... - 1 -

JURISDICTION ..... - 1 -

CONSTITUTIONAL PROVISIONS INVOLVED ..... - 1 -

STATEMENT OF THE CASE ..... - 2 -

REASONS FOR GRANTING THE PETITION ..... - 7 -

I. THE RULING BELOW FAILS TO FOLLOW THE FRAMEWORK SET OUT BY THIS COURT IN EVALUATING WHETHER CONSTITUTIONAL ERRORS ARE STRUCTURAL IN NATURE ..... - 9 -

II. HAD THE COURT OF APPEALS FOLLOWED THE PROPER FRAMEWORK FOR DETERMINING STRUCTURAL ERROR, IT WOULD HAVE REVERSED PETITIONER'S CONVICTIONS ..... - 12 -

III. THE COURT OF APPEALS' ANALYSIS IN THIS CASE CONFLICTS WITH OTHER CIRCUITS' TREATMENT IN FAILURE TO INQUIRE CASES ..... - 16 -

CONCLUSION ..... - 19 -

INDEX TO APPENDIX

APPENDIX A: Opinion of Court of Appeals.....1a

TABLE OF AUTHORITIES

CASES

Page(s)

Arizona v. Fulminante,
499 U.S. 279 (1991) ..... passim

Benitez v. United States,
521 F.3d 625 (6th Cir. 2008) 16, 17

Chapman v. California
386 U.S. 18 (1967) 9

Strickland v. Washington,
466 U.S. 668 (1984) 6

Sullivan v. Louisiana,
508 U.S. 275 (1993) 10, 14

United States v. Gonzalez-Lopez,
548 U.S. 140 (2006) ..... passim

United States v. Torres-Rodriguez,
930 F.2d 1375 (9th Cir. 1991) 18

United States v. Williams,
616 F.3d 685 (7th Cir. 2010) 1

United States v. Zillges,
978 F.2d 369 (7th Cir. 1992) 7, 8, 11,15

STATUTES

28 U.S.C. §1254(1) 1

28 U.S.C. §2255 18

U.S. Const. Amend. VI 1, 2

Petitioner Adam Williams ("Petitioner"), respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on August 5, 2010.

OPINION BELOW

The opinion of the court of appeals is reported at *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010), and is reproduced in the Appendix at 1a – 19a.

JURISDICTION

The court of appeals issued its judgment on August 5, 2010 (App., *infra*, 1a – 19a). This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The relevant constitutional provision is the Sixth Amendment to the Constitution of the United States of America, which reads that:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,

> and to have the Assistance of Counsel for his defence.

U.S. Const. Amend. VI.

STATEMENT OF THE CASE

This Court's jurisprudence has differentiated between two categories of constitutional errors that occur during criminal proceedings: trial errors and structural errors. The distinction lies not in the severity of the error, but in the type or nature of the error at issue. This Court has held repeatedly that trial errors are subject to harmless error analysis, whereas structural errors are not.

Trial errors have been defined as those errors which:

> [o]ccurred during the presentation of the case to the jury, and which may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt.

Arizona v. Fulminante, 499 U.S. 279, 307-08 (1991).

Structural errors, on the other hand, are those which affect "the framework within which the trial proceeds, rather than simply an error in the trial process itself." *Id. at* 310. Because these errors affect the integrity of the trial, they are unlike trial errors which can be "quantitatively assessed in the context of other evidence." *Id.* at 308. Harmless error analysis thus cannot be performed.

This Court's recent decision in *United States v. Gonzalez-Lopez* reiterated why harmless error review of structural errors is futile: "we rest our conclusion of structural error upon the difficulty of assessing the effect of the error." 548 U.S. 140, 149 n. 4 (2006). Thus, it is not that the error is so grave that harm is presumed, but rather that the nature of the error means that harm cannot fairly be evaluated. *Id.* at 149.

The error in the instant case was just such a structural error. The court of appeals, however, failed to apply the framework set out by this Court in both *Fulminante* and *Gonzalez-Lopez* to assess whether an error is structural, leading to this petition for certiorari.

Petitioner Adam Williams was arrested in April 2008 and charged with distribution of marijuana, distribution of cocaine base, possession with intent to distribute cocaine base, possession of a firearm by an individual formerly a convicted felon, and possession of a firearm in furtherance of drug trafficking. App., *infra,* 2a-3a. The charges stemmed from three separate alleged controlled buys involving a confidential informant who was wired for both audio and video. *Id.* at 2a.

As an indigent defendant, Petitioner was represented by appointed counsel at trial. Prior to trial, Petitioner sent a letter to Magistrate Judge Andrew Rodovich noting that he had not yet seen the audio and video evidence of the alleged controlled buys and wanted analysis to be performed on that evidence. *Id.* at 4a, n.2. Because Petitioner was

represented by counsel at the time, Magistrate Judge Rodovich denied the request.

Trial began in December 2008. At trial, Petitioner's defense to the drug distribution charges centered on the presence of a third party during the alleged controlled buys, the lack of credibility of the confidential informant, and the assertion that he was sharing drugs but not distributing drugs for sale. *Id.* at 3a-4a. During the first day of trial, the government introduced the videotapes that corresponded to the three alleged controlled buys. *Id.* at 4a. On the second day of trial, prior to the jury entering the courtroom, Petitioner asked the judge if he could say something. *Id.* at 4a-6a. Petitioner had not addressed the court at any prior point.

The exchange that followed was quoted in its entirety in the court of appeals' opinion, and with good reason. *Id.* After Petitioner expressed his concerns over the fact that his counsel had never shown him one of the videotapes that was presented to the jury, the judge told Petitioner that he was not trying the case on his own and that his current attorney was competent. App., *infra*, at 5a. Petitioner then told the judge "That's the point I'm trying to make. I feel like my lawyer has failed me." *Id.*

Confronted with such a statement, the trial judge did no follow-up whatsoever. *Id.* at 4a-6a. He asked no further substantive questions of Petitioner. *Id.* Neither did he ask any questions of Petitioner's counsel. *Id.*

The trial judge's only response to Petitioner was both dismissive and confusing: "Not yet. Too late. We're in the middle of a trial. We are going to go forward. I don't care -- at this stage. I really don't care what you think. You got it?" *Id.* at 6a. Aside from indicating that he understood, Petitioner followed the trial judge's admonition and made no further comment during the trial. *Id.*

At the close of the three-day trial, the jury found Petitioner guilty of five of the seven charges. *Id.* Petitioner was acquitted of possession of a firearm in furtherance of drug trafficking. App., *infra,* at 6a. More noteworthy, Petitioner was acquitted of one of the charges for which there was alleged videographic and audio evidence – distribution of marijuana. *Id.* In August 2009, Petitioner was sentenced to 135 months in prison.

On appeal before the Seventh Circuit, Petitioner raised three issues. The pertinent issue to this petition for certiorari was whether the trial court's complete failure to inquire regarding Petitioner's concerns with his counsel and the trial court's additional statements meant to dissuade from Petitioner from raising any future concerns constituted a structural error that merited reversal of his conviction.

In its brief the government conceded that the trial court had erred under Seventh Circuit law by failing to inquire into Petitioner's concerns with his counsel. The government argued that any such error was harmless because Petitioner had not shown prejudice in the manner required by this Court's

decision in *Strickland v. Washington*, 466 U.S. 668 (1984).

On reply, Petitioner argued that any prejudice or harmless error analysis was inapplicable because the trial court's failure to inquire and dismissive statements to Petitioner constituted a structural error based on the framework established by this Court in *Fulminante* and *Gonzalez-Lopez*. Specifically, the trial court's error was of a type that affected the integrity of the trial proceeding and left the court of appeals with no record on which to determine the extent of the harm caused by the error.

The failure to inquire issue was the only one addressed by the court of appeals at oral argument on May 18, 2010. On August 5, 2010, the court of appeals rendered its decision in the case on all three issues briefed by the parties, affirming the trial court. App., *infra*.

In its decision on the failure to inquire issue, the court of appeals first held that the trial court had abused its discretion by failing to inquire regarding Petitioner's concerns and "abruptly silencing" him. *Id.* at 7a. The court of appeals further held that the trial court's behavior could have "served to stifle what may have been legitimate concerns" about his counsel. *Id.* at 7a-8a. The court of appeals also noted that it was considering as an issue of first impression whether a trial court's total failure to conduct any inquiry into a defendant's concerns about his counsel was subjected to harmless error review. *Id.* at 8a. The court of appeals specifically held that "the district court's abuse of discretion will only result in a new trial if Williams can show prejudice. If not, then

any error was harmless." *Id.* The panel analogized the instant case to *United States v. Zillges*, a Seventh Circuit case dealing with a failure to inquire adequately. 978 F.2d 369 (7th Cir. 1992).

While the court of appeals mentioned structural error briefly, it did not otherwise reference the framework set out by this Court in its earlier decisions in *Fulminante* and *Gonzalez-Lopez*. In fact, neither case is mentioned by the court of appeals. Further, the court of appeals did not address the effect the error may have had on the integrity of the trial proceeding and the resultant inability to assess harm – that separates structural and trial errors. As a result, this petition for certiorari follows.

REASONS FOR GRANTING THE PETITION

The court of appeals' decision below does not square with this Court's existing jurisprudence on structural errors and the framework for properly evaluating them. This Court has cautioned repeatedly that structural errors should be considered a limited class of constitutional errors for which harmless error analysis is inapplicable. As such, the lower appellate courts must apply this Court's framework in a manner that delineates between trial and structural errors.

This is especially true in the context of constitutional errors related the Sixth Amendment, which protects the right of all criminal defendants to counsel at certain critical stages of their criminal proceedings, including trial. In the instant case, the court of appeals ignores this Court's framework for analyzing structural error. Instead, the court of

appeals declares as a matter of first impression that despite the total failure to inquire by the trial court and resultant inability to analyze harm, the court would still subject petitioner to meeting the harmless error standard. App., *infra,* at 8a.

In doing so, the court of appeals analogizes the instant case to *Zillges,* an earlier Seventh Circuit case that was contemporaneous to *Fulminante* (but does not reference *Fulminante*) and that pre-dates *Gonzalez-Lopez. Id.* The court of appeals here should have looked to *Fulminante* and *Gonzalez-Lopez* as guideposts to evaluate whether the failure to inquire constituted a structural error.

Had the court of appeals evaluated the error below according to the framework set out by this Court, it would have reversed Petitioner's conviction. The error in Petitioner's case -- which the court of appeals agreed was an abuse of discretion -- is precisely the type of error which affects the integrity of the trial proceedings and for which harmless error analysis is inappropriate and impossible.

The court of appeals' approach below conflicts with decisions by other circuits that have held that harmless error analysis is inapplicable to cases of failures to inquire into a defendant's concerns with his attorney. These decisions are more consistent with this Court's jurisprudence on the topic.

Because of the importance of the structural error distinction and disagreement between lower appellate courts as to how to evaluate errors related to a failure to inquire, this Court's review is

warranted. Accordingly, this Court should grant this petition for certiorari.

I. THE RULING BELOW FAILS TO FOLLOW THE FRAMEWORK SET OUT BY THIS COURT IN EVALUATING WHETHER CONSTITUTIONAL ERRORS ARE STRUCTURAL IN NATURE

In this Court's decision in *Arizona v. Fulminante*, the majority extended the harmless error rule of *Chapman v. California* to coerced confessions. 499 U.S. at 302 (discussing *Chapman*, 386 U.S. 18 (1967)). In doing so, the Court delineated between "trial errors" and "structural defects in the constitution of the trial mechanism." *Id.* at 291. Because the admission of a coerced confession was considered only a trial error, this Court still held the error was subject to harmlessness review. *Id.*

Though several Justices wrote opinions in the *Fulminante* decision, there is some consistency between them in terms of how they define the difference between trial and structural errors. A trial error is:

> [e]rror which occurred during presentation of the case to the jury, and which may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt.

Id. at 307-08 (opinion of the court). On the other hand, structural errors are those which defy harmless error analysis because it is "impossible to assess the

effect on the jury." *Id.* at 291 (White, J., dissenting). The essence of what makes these particular defects "structural" is that they affect the trial proceedings in such a way that their harm cannot reasonably be assessed. *Id.* at 290.

This Court again addressed the distinction between structural and trial errors in *United States v. Gonzalez-Lopez,* in which this Court granted certiorari to consider whether an erroneous denial of the defendant's Sixth Amendment right to counsel of choice was subject to harmless error review. 548 U.S. at 143-44. This Court held that the denial of counsel of choice was a structural error that was not subject to harmless error review. *Id.* at 152.

In doing so, this Court echoed the reasoning from *Fulminante* that structural errors are distinct from trial errors because of their effect on the trial's integrity and resultant difficulty in assessing their effect or harm. *Id.* at 148-49. The Court in *Gonzalez-Lopez* clarified any ambiguity about the trial/error dichotomy by noting that "as we have done in the past, we rest our conclusion of structural error upon the difficulty of assessing the effect of the error." *Id.* at 149, n. 4.

This Court pointed to the "myriad aspects of representation" by counsel as bearing directly on the "framework within which the trial proceeds." *Id.* at 150, quoting *Fulminante,* 499 U.S. at 310. Under the Court's reasoning, erroneous deprivation of the counsel of choice "unquestionably qualifies" as structural error because it has "consequences that are necessarily unquantifiable and indeterminate." *Id.* at 150 (quoting *Sullivan v. Louisiana,* 508 U.S. 275, 282

(1993)). Harmless error analysis was impossible because it would be merely a "speculative inquiry into what might have occurred in an alternate universe." *Id.*

Fulminante and *Gonzalez-Lopez* confirm that the hallmark of structural error is the inability to assess the harm that results from the error due to its effect on the integrity of the entire trial proceeding. The court of appeals failed to address this critical distinction when considering the trial court's abuse of discretion in the instant case.

As mentioned above, the court below attempted to draw parallels between the instant case and the court's earlier decision in *Zillges,* where it had "determined that a failure to inquire was not a structural error requiring automatic reversal, but instead, was subject to the harmless error standard." App., *infra,* at 8a.

However, the *Zillges* court did not in any way evaluate or analyze how the error might have affected the integrity of the trial proceeding.[1] In light of this Court's existing jurisprudence on determination of structural errors, the court of appeals in the instant case should have relied on *Fulminante* and *Gonzalez-Lopez* for the proper legal

---

[1] Additionally, as will be discussed in the next section, *Zillges* is factually distinct from the instant case in ways which are relevant to the determination of whether a failure to inquire can be structural error. For example, *Zillges* is a case where the trial court actually did inquire into the defendant's dissatisfaction, thereby providing some record with which to better assess harm.

framework to assess whether harmless error review should apply.

The court of appeals did not perform this required analysis. Petitioner argued below that the nature of the error in this case was precisely the type which defies harmless error analysis, relying on *Fulminante* and *Gonzalez-Lopez*. The court of appeals' opinion contains no discussion regarding the inherent difficulty in assessing the nature of the harm caused by the trial court's failure to conduct any inquiry and dismissal of Petitioner's concerns. This is especially surprising in light of the court of appeals' statements in the opinion that Petitioner was "abruptly silenc[ed]" and that the trial court's behavior "served to stifle what may have been legitimate concerns that Williams had about his attorney's performance." App., *infra*, at 7a-8a.

Accordingly, the court of appeals failed to apply the proper framework for evaluating and identifying structural error that has been set out by this Court. This Court should therefore grant certiorari to clarify the proper framework or method for determining when constitutional errors fit into this limited, but important, category of constitutional errors for which harmless error is inapplicable.

II. HAD THE COURT OF APPEALS FOLLOWED THE PROPER FRAMEWORK FOR DETERMINING STRUCTURAL ERROR, IT WOULD HAVE REVERSED PETITIONER'S CONVICTIONS

Had the court of appeals followed the framework that this Court set out in *Fulminante* and

Gonzalez-Lopez, it would have found that the trial court's failure to inquire into Petitioner's concerns with his counsel in the instant case was a structural error to which harmless error review is inapplicable. The failure to inquire affected the integrity of the trial proceeding, making any resultant harm impossible to quantify. Thus, just as in *Gonzalez-Lopez,* harmless error analysis in the instant context would also be a "speculative inquiry into what might have occurred in an alternate universe." 548 U.S. at 150.

First, the trial court conducted absolutely no inquiry into Petitioner's concerns.[2] The inquiry was not merely brief or imperfect; it was wholly and inexplicably absent. Despite the relative brevity with which it could have been accomplished, no questions were asked of Petitioner or his appointed attorney, who was present. This is especially troubling given that Petitioner told the court, in response to a comment by the trial court that his counsel was competent, "[t]hat's exactly the point I'm trying to make. I feel like my lawyer has failed me." App., *infra,* at 5a. Despite the simultaneously serious and non-specific qualities of this statement, the trial court failed to ask a single follow-up question.

This failure to inquire deprived the court of appeals of any semblance of a starting point in the record in terms of assessing harm. *Gonzalez-Lopez* speaks to the "myriad aspects of representation" that

---

[2] In fact, the court of appeals indicated that it had "never addressed a situation where a district court did not inquire into a defendant's concerns with his current attorney..." App., *infra,* at 8a.

can bear directly on the "framework within which the trial proceeds," but the trial court afforded Petitioner no opportunity to discuss any aspects of this representation. 548 U.S. at 150.

Numerous critical questions about this representation were left unaddressed. What was the scope of concerns that Petitioner had with his trial counsel? Had the relationship between Petitioner and his trial counsel deteriorated to the point that there was mistrust or a total breakdown in communication? Was Petitioner entertaining the notion of proceeding pro se because of the failures he perceived by his counsel? Was there other evidence introduced at trial to which Petitioner had been denied access?

These are just a few examples from a litany of potential issues that the court of appeals could not fairly assess because of the failure of the trial court to conduct any inquiry. Not only is it impossible to know what Petitioner might have said, but it is impossible to understand how that might have affected the trial going forward (or how it had already affected the first day of the trial). That leaves the appellate court with no record for evaluating harm. Any harmless error analysis would require the type of "speculative inquiry" into an "alternate universe" that *Gonzalez-Lopez* held makes harmless error analysis inappropriate. *Gonzalez-Lopez,* 548 U.S. at 150. The failure to inquire and stifling of Petitioner's concerns therefore created "consequences that are necessarily unquantifiable and indeterminate," and "unquestionably qualifies as structural error." *Id.* (quoting *Sullivan v. Louisiana,* 508 U.S. at 282).

Zillges, on which the court of appeals relies, is distinguishable because the court of appeals in that case had a record and analysis from the trial court to review. *Zillges* is more appropriately conceptualized as a case where the inquiry was incomplete or inadequate. While the trial court in that case could have done a *better* job of inquiring as to the defendant's concerns, the trial court did inquire into the defendant's concerns and thereby gave the court of appeals some basis for assessing the impact of those concerns as part of a harmless error analysis. First, Zillges had provided the trial court with specific objections to his counsel. *Zillges,* 978 F.2d at 370-71. Second, the trial court in *Zillges* not only engaged in two separate, albeit brief, colloquys with the defendant about his counsel, but also spoke directly with Zillges' attorney and permitted Zillges and his counsel an opportunity to discuss Zillges' concerns. *Id.* at 371. Third, the trial court then twice followed up with the defendant to ensure that he was satisfied, and explained in summary fashion why he was content with having Zillges proceed with his current counsel. *Zillges,* 978 F.2d at 370-71. *Id.* These minimal steps provided the court of appeals with some record to evaluate whether any potential harm accrued from the trial court's error. In the instant case, no such record exists.

Moreover, the trial court in the instant case did more than just fail to inquire. The trial court told Petitioner point blank: "We are going to go forward, I don't care -- at this stage, I really don't care what you think. You got it?" App., *infra,* at 6a. In the words of the court of appeals, the trial court's statements to Petitioner "abruptly silenc[ed] him" and also

"served to stifle what may have been legitimate concerns." *Id.* at 7a-8a.

Thus, not only was the court of appeals deprived of any record regarding Petitioner's concerns at the time that he attempted to raise his concerns with the judge, but the judge's dismissive comments to Petitioner prevented both the court of appeals and this Court from being able to evaluate any further concerns Petitioner may have had during the trial or how they might have affected the presentation of evidence, cross-examination of witnesses, or even Petitioner's own trial testimony.

The nature of the trial court's error -- both the failure to inquire and manner of stifling what may have been legitimate concerns – affected the integrity of the trial proceeding in a manner which made quantitative assessment of harm impossible. Such error is therefore structural under this Court's reasoning in *Fulminante* and *Gonzalez-Lopez.* Harmless error analysis does not apply and reversal is mandated.

III. THE COURT OF APPEALS' ANALYSIS IN THIS CASE CONFLICTS WITH OTHER CIRCUITS' TREATMENT IN FAILURE TO INQUIRE CASES

The court of appeals' analysis below conflicts with the approaches taken by two other appellate circuits in failure to inquire cases. In those cases, because the nature of the error affected the proceedings in a way that left the appellate court with an inadequate record to evaluate harm, the Sixth and Ninth Circuits could not and thus did not

subject the lower court's error to harmless error review.

In *Benitez v. United States,* the Sixth Circuit considered whether the defendant's right to counsel was violated when the trial court failed to ascertain the basis for the defendant's concerns with his counsel, after the defendant had expressed dissatisfaction with his counsel at sentencing. 521 F.3d 625, 630-31 (6th Cir. 2008). The Sixth Circuit held in *Benitez* that the trial court's failure to inquire into the "source and nature of Benitez's dissatisfaction....violated his Sixth Amendment right to counsel." 521 F.3d at 636. A "violation of a defendant's right to counsel at a critical stage is a structural error, and is therefore not subject to an analysis of whether the error was harmless or prejudicial." *Id.* at 630.

The Sixth Circuit noted that:

> Had the district court inquired into Benitez's statements and made explicit findings, we could consider whether the court properly exercised its discretion in refusing to postpone the proceedings. But the record in this case simply does not allow for such an inquiry.

Id. at 635. The inability to assess the effect of the error on the sentencing proceeding therefore prevented the court of appeals in that case from fully ascertaining the propriety of the trial court's actions. However, because of the lack of record, the Sixth

Circuit still held that harmless error analysis was inappropriate.[3]

In *United States v. Torres-Rodriguez*, the Ninth Circuit "reverse[d] Torres' conviction in its entirety because of the trial court's failure to entertain Torres' motion for substitution of counsel." 930 F.2d 1375 (9th Cir. 1991), *overruled on unrelated grounds by Bailey v. United States*, 516 U.S. 137 (1995). In *Torres-Rodriguez*, the Ninth Circuit highlighted the fact that the trial court made "absolutely no inquiry," just as in Petitioner's case.[4] 930 F.3d at 1381.

The Ninth Circuit had "no way of knowing the nature of the defendant's complaint with his appointed counsel, because the trial judge foreclosed all explanations of any kind with regard to the motion to substitute." *Id.* The Ninth Circuit therefore did not conduct a harmless error analysis and reversed Torres-Rodriguez's conviction and remanded for a new trial. *Id.* at 1390.

In finding that the nature of a trial court's failure to inquire rendered them unable to perform harmless error analysis, the approaches taken by the

---

[3] In *Benitez*, the Sixth Circuit reversed the judgment of the district court and remanded the case for consideration of a procedural issue -- whether Benitez was entitled to equitable tolling for his motion under 28 U.S.C. §2255. If the trial court determined that Benitez was entitled to equitable tolling, the sentencing hearing had to be redone.

[4] The Ninth Circuit also highlighted that the "record indicates that [the Ninth Circuit's] lack of knowledge is not the fault of Torres." 930 F.3d at 1381. Similarly, the Seventh Circuit was deprived of knowledge regarding the nature or extent of Petitioner's concerns through no fault of Petitioner.

Sixth and Ninth Circuits conflict with that taken by the Seventh Circuit. This Court should grant certiorari to resolve this circuit split.

CONCLUSION

For the foregoing reasons, this Court should grant this petition for certiorari.

Respectfully submitted,

JOHN F. STANTON
COUNSEL OF RECORD
STACI D. SCHWEIZER
HOWREY LLP
1299 PENNSYLVANIA AVENUE, NW
Washington, DC 20004
(202) 783-0800
stantonj@howrey.com
schweizers@howrey.com

Attorneys for Petitioner Adam Williams

November 3, 2010